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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of
WASTE MANAGEMENT OF
WASHINGTON, INC.
d/b/a WM Healthcare Solutions
of Washington
720 4th Ave. Ste 400
Kirkland, WA 98033-8136

Docket No. TG-120033

PREFILED REBUTTAL TESTIMONY OF
MIKE PHILPOTT

1. I am over the age of 18 and am competent to testify to the matters addressed below.
2. I am the Regional Operations Director for Stericycle, Inc. and Stericycle of Washington, Inc. ("Stericycle") for the Northwest region and have held that position since January 2011. Prior to holding this position, I was the District Manager for the Pacific Northwest beginning in 1999 when I joined Stericycle through its acquisition of BFI Medical Waste Systems of Washington, Inc. ("BFI"). My responsibilities include overall, day-to-day management of Stericycle's waste transportation and processing operations in my region, including all of Washington. My testimony below is based on my personal knowledge and/or the institutional knowledge of Stericycle of Washington, Inc. of which I am aware and on which I am authorized to provide testimony on behalf of Stericycle.

1 3. I have reviewed the prefiled testimony of biomedical waste generators Waste
2 Management has filed in this proceeding and respond to portions of that testimony below.

3 4. The only common testimony of these generators is a desire for an additional
4 biomedical waste collection service so that competition between Stericycle and the other
5 generator would, supposedly, lead to the best service. In the words of some generators, they
6 want "leverage" over Stericycle to ensure that they receive the best service. In fact, the history
7 of Stericycle's services to Washington generators demonstrates that neither competition nor
8 leverage are necessary to have the best services and that where competition does exist it does
9 not lead to improved services from competing generators. Stericycle has consistently
10 innovated to offer best-in-class services without statewide competition for 13 years. Moreover,
11 Waste Management and other carriers have not matched or exceeded the quality of Stericycle's
12 services even when competing in their existing certificate territories.

13 5. I find the generators' testimony states only a very general desire for competition.
14 Their statements in favor of competition do not claim that Stericycle's services are
15 unsatisfactory in some way. For example, no generator states that competition is necessary
16 because Stericycle does not offer satisfactory containers, customer training, waste treatment
17 and disposal, or some other element of biomedical waste service. To the testifying generators
18 statewide competition appears to be a universal good regardless of the quality of Stericycle's
19 existing service.

20 6. Most of the testifying generators also do not seem to think that Waste
21 Management's services offer a viable alternative to Stericycle's. Only three of the eight
22 generators offering testimony said they intended to switch their services to Waste Management
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1 if it obtains statewide authority. I do not believe that this testimony shows that Stericycle is
2 providing unsatisfactory service.

3 7. Stericycle has provided biomedical waste collection services without a statewide
4 competitor since 1999. If the testifying generators are correct, over these 13 years the quality
5 of Stericycle's services should have stayed the same or declined because there was insufficient
6 competitive pressure. But the opposite is true. Even without statewide competition Stericycle
7 has consistently introduced new, innovative services that respond to and anticipate customers'
8 needs. For example, in 2004 Stericycle introduced its Biosystems sharps service which was the
9 first and remains the only sharps service in Washington to use reusable sharps containers. As I
10 stated in my initial prefiled testimony, Stericycle's reusable sharps containers divert more than
11 50% of the sharps waste stream from landfills. As discussed below, throughout the program
12 Stericycle has diverted over nine million pounds of plastics from Washington's landfills and
13 eliminated the need to manufacture a similar volume of new plastic sharps containers.
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15 8. The Biosystems program also introduced in-hospital sharps management
16 services that did not previously exist in Washington. Stericycle technicians will design,
17 implement, and manage in-hospital exchange, collection and packaging of sharps containers,
18 removing a safety risk to the hospital's employees and promoting efficient transportation of
19 waste to lower costs. Stericycle introduced Biosystems when there was no statewide
20 competition and even though no competing service existed. Since Stericycle introduced
21 Biosystems, no other biomedical waste collection company competing with Stericycle in
22 Washington has introduced a comparable full-service sharps management program or a sharps
23 collection service with reusable containers.
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1 9. As another example, Stericycle offers its Steri-Safe OSHA compliance program
2 to Washington generators. In this program generators can sign up for a bundle of services that
3 includes biomedical waste and bloodborne pathogens training, OSHA regulatory compliance
4 resources and audits, and biomedical waste collection services. As with Biosystems, this
5 service package was introduced by Stericycle even though there was no statewide competition
6 or any competing service. Since Steri-Safe was introduced other Washington carriers in
7 competition with Stericycle have not developed a competing program.
8

9 10. Stericycle has also created a convenient electronic manifesting process and a
10 secure, on-line database of waste manifests that its customers can access at any time. These are
11 more innovations that Stericycle introduced to benefit its customers without statewide
12 competition and that, to my knowledge, no other generator has responded to by creating
13 competing services.
14

15 11. Finally, in the 13 years that Stericycle has not had a statewide competitor it has
16 continued to add to its container options to meet customer needs. In this time Stericycle has
17 introduced reusable biomedical waste containers in a range of sizes that were not previously on
18 its tariff and new grey incinerate tubs in small and large sizes.
19

20 12. This history does not bear out the testifying generators' belief that statewide
21 competition must be present for the best services to be developed or that competition would
22 lead to improvements in service. In my experience it is innovation to meet unrecognized or
23 underserved customer needs that results in high quality services.
24

25 13. If the testifying generators were correct that competition leads to the best service
26 offerings then it should also be true that Stericycle's services would cause its competitors to

1 introduce comparable or better services in order to win customers. But that is also not what has
2 happened in Washington. As discussed above, no competitor, including Waste Management,
3 has developed services that compete with Stericycle's innovations in reusable sharps
4 containers, in-hospital waste management, and regulatory compliance.
5

6 14. Even with the resources of a national corporation Waste Management is not
7 competing with Stericycle by offering the best service. I attended the deposition of Jeffery
8 Norton, a Waste Management witness in this proceeding. I have attached excerpts of this
9 testimony as Exhibit A. Mr. Norton agreed that generators value a choice of different kinds of
10 containers. Exhibit A, 14:12-15, 102:8-20. However, Waste Management offers only one type
11 of plastic container while Stericycle offers the choice of three kinds of plastic containers in
12 eight sizes. Waste Management's ecoFinity sharps program, which Mr. Norton calls
13 "sustainable" because it reclaims as recyclable material some waste that would otherwise be
14 disposed of in a landfill, diverts only 22% of the monthly sharps waste stream on average while
15 Stericycle's reusable sharps containers divert approximately half of the waste stream. Exhibit
16 A, 142:1-15. I also attach as Exhibit B a Waste Management supplemental response to data
17 requests reporting the portion of the ecoFinity sharps waste stream that is reclaimed. Waste
18 Management also does not offer comparable in-hospital sharps management services or
19 comprehensive OSHA compliance services in Washington. For these reasons I disagree with
20 the testifying generators' general belief that competition will lead to the best services. In my
21 experience with Stericycle, innovation to meet customer needs is the real source of best-in-class
22 services, which is what Stericycle has provided to Washington biomedical waste generators for
23 20 years.
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1 15. Several testifying generators also stated that they believed statewide competition
2 would lead to the best prices. These generators have not explained why they think this is true
3 in a regulated industry and have not alleged that more competition would lead to rates lower
4 than those Stericycle has offered for 20 years. In fact, Stericycle has provided biomedical
5 waste collection services for 20 years without raising its base rates. I have attached Stericycle's
6 current tariff as Exhibit C and records of Stericycle's past tariff revisions as Exhibit D. From
7 January 1992 to the most recent data, the Consumer Price Index has risen 68%, indicating 68%
8 inflation in the cost of goods and services. Even though Stericycle's costs were subject to this
9 inflation, it has not passed on those increased costs to customers. In terms of real dollar value,
10 this means that Stericycle has consistently *lowered* the costs of its services to Washington
11 generators every year relative to inflation, and has done so despite not having a statewide
12 competitor since 1999. In other words, Washington generators are now paying only a dollar for
13 services that should cost \$1.68 if Stericycle had raised its rates only to match national inflation.
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16 16. If the testifying generators were correct, then Stericycle would have raised its
17 rates when it did not face statewide competition, at least to keep pace with the increase in its
18 own costs – but this didn't happen. No generator has testified that more deeply discounted
19 rates are possible while maintaining a profit that will sustain statewide service in the long term.
20 Finally, no generator has explained how more deeply discounted rates could be achieved by
21 dividing the statewide market for biomedical waste services between two carriers who are each
22 required to serve the entire state. In a divided statewide market each carrier would have
23 customers in most areas of the state. Each carrier would continue to incur most of the costs of a
24 statewide operation to serve its customers, including route transportation from waste transfer
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1 stations to customer locations and transportation to the waste processing facility, but would
2 only receive a portion of the statewide revenue. No generator has addressed how prices could
3 go down after statewide competition introduces this cost pressure.

4 17. Rodger Lycan testified on behalf of Pathology Associates Medical Laboratories
5 (PAML) that "Stericycle does not have much interest in offering competitive prices or in
6 reducing its costs." Mr. Lycan has stated no basis for this belief in his testimony. This is
7 understandable because Mr. Lycan is not privy to Stericycle's substantial internal efforts to
8 reduce its costs and keep rates low and stable.
9

10 18. Contrary to Mr. Lycan's belief, Stericycle works tirelessly to reduce its costs
11 and maintain its rates. It is through these efforts that Stericycle has been able to not raise its
12 base rates for 20 years. For example, over the years Stericycle has shifted to a system in which
13 routes are developed using mapping software in order to cut any unnecessary transportation
14 miles and costs. Stericycle has consistently consolidated routes where it can to reduce costs.
15 Stericycle has introduced electronic hand-held scanners for its drivers to improve information
16 gathered about collection and transportation for the purpose of making these operations more
17 efficient and to reduce paperwork and the administrative costs of collection. Stericycle has
18 switched its waste processing technology to lower cost steam autoclave technology. And
19 Stericycle has adopted long term lease contracts for equipment that offer costs savings over
20 ownership. These are just some examples of the many measures Stericycle has taken and
21 continues to take to reduce its costs as much as possible.
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24 19. Carla Patshkowski of Providence Medical Group testified that she was
25 dissatisfied with the \$10 minimum monthly billing fee in Stericycle's tariff, which is charged to
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1 customers in any month that no waste is collected from a facility. Ms. Patshkowski does not
2 testify that the minimum monthly fee is not compensatory for services rendered.

3 20. Stericycle's tariff includes a \$10 fee in months when a customer has no
4 collection. This fee is part of Stericycle's tariff, has been approved by the Commission, and is
5 subject to the Commission's regulation. Although Ms. Patshkowski claims to be dissatisfied
6 with the charge in this proceeding, neither she nor any other Stericycle customer has ever filed
7 a complaint with the Commission asking to eliminate the charge.

9 21. Stericycle added the minimum monthly fee to its tariff in 2001 to ensure that it
10 could continue to offer services to small quantity generators at existing rates. Stericycle
11 analyzed the costs of initiating and maintaining service to small generators who have
12 infrequent, less-than-monthly collections. These costs include the administrative costs
13 necessary to set up a new account, offer consultation and service training to new customers,
14 and ship or transport containers, bags, labels, and other supplies to a new customer for the first
15 time. Stericycle also incurs ongoing costs associated with having its container assets held by
16 customers for longer periods of time, such as keeping track of these amortized assets. Together
17 these costs can be greater than the operating profit generated by waste collection from small
18 generators who do not receive service every month. Therefore, Stericycle decided to add the
19 minimum monthly charge to help preserve the profitability of infrequent small generator
20 service and Stericycle's ability to serve these customers in large numbers without raising its
21 rates. The \$10 charge is not a profit center for Stericycle. It is my belief that Ms. Patshkowski
22 either does not recognize the costs of service in non-collection months or does not want to pay
23 a minimum fee to cover those costs.
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1 22. Some generator witnesses have raised concerns related to Stericycle's customer
2 service and that testimony is addressed in the prefiled rebuttal testimony of James Ryan and
3 Ron Adams. To place these concerns in context, however, I have reviewed the complaints
4 against Stericycle filed with the Commission. In a public records request to the Commission
5 Stericycle asked for "Records of any and all complaints filed with the WUTC regarding
6 Stericycle of Washington, Inc." In response, the Commission produced six complaints. I have
7 attached those complaints as Exhibit E. Over Stericycle's 20 year service history in
8 Washington this is less than one complaint every three years. In addition, only two of the six
9 complaints were upheld by the Commission. This means that Stericycle has had only one
10 upheld complaint for every 10 years it has provided service and that Stericycle's conduct has
11 been upheld 66% of the time. I note that none of the testifying generators have made any
12 complaint to the Commission, let alone had any complaint upheld.
13

14 23. Stericycle also requested "Records of any and all complaints filed with the
15 WUTC regarding Waste Management of Washington, Inc. since 2001." The Commission
16 produced records of hundreds of complaints. I have attached those complaints on a CD-ROM
17 as Exhibit F. In his filed declaration Michael Weinstein of Waste Management claims that
18 Waste Management was upheld in 60% of these complaints. If this is true, Stericycle's record
19 of upheld complaints is slightly better than Waste Management's. I conclude from this
20 information that the few complaints against Stericycle that have been upheld are consistent
21 with, if not better than, the rate of upheld complaints that would reasonably be expected of any
22 large service provider.
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24 24. I have also reviewed the prefiled testimony of Waste Management witness
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1 Jeffery Norton and respond to that testimony below.

2 25. Mr. Norton offers testimony concerning Stericycle's containers and the addition
3 of a hinged lid container manufactured by Rehrig. Mr. Norton first testifies that Stericycle's
4 Steritub containers were disliked by "most" customers, that he mentioned problems with these
5 containers to me, and that I told him we would not change containers. These statements are all
6 incorrect or misleading in important respects.

7
8 26. It is simply not true that "most" customers dislike Steritubs. In fact, even
9 though Stericycle offers other types of reusable plastic containers manufactured by Rubbermaid
10 and Rehrig in a variety of sizes, and offers cardboard boxes in a variety of sizes, many
11 customers still choose to use Steritubs as part of their container mix. No container is perfect,
12 and Steritub lids do sometimes fit imperfectly, but the customers' overall choice has clearly
13 been to use Steritubs even with the choice of several other container types, including the Rehrig
14 containers offered by both Stericycle and Waste Management. In my experience offering a
15 choice of different container types and sizes is more important than trying to offer a "perfect"
16 container because the customer can then select the mix of containers that best meet its needs.
17 At his deposition Mr. Norton also agreed that customers value a choice of containers, including
18 a choice between Rehrig containers and other containers. Exhibit A, 14:12-15, 102:8-20. I
19 also note that no testifying generator has stated that Steritubs are unsatisfactory or that they
20 require an alternate container option that is not offered by Stericycle. Mr. Norton's opinion is
21 not consistent with this generator testimony or with the reality of the choices Stericycle's
22 customers make.
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25 27. It is also misleading for Mr. Norton to testify that I told him Stericycle would
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1 not change containers. It is true that Stericycle has not discontinued using Steritubs. The
2 principal reason, as I just mentioned, is that many customers continue to ask for Steritubs. In
3 addition, Stericycle has long offered customers a choice of different kinds of containers. The
4 tariff with these container choices is given to each new customer and it is the customer that
5 chooses which containers to use. Stericycle has offered its customers 21 gallon and 48 gallon
6 Steritubs since it began services in Washington. Since 1993 Stericycle has also offered 10, 20,
7 28, and 40 gallon tubs manufactured by Rubbermaid. Stericycle also offers cardboard boxes in
8 several sizes. I attached a list of containers offered by Stericycle and the years in which those
9 containers were first deployed as Exhibit B to my initial prefiled testimony. Thus, customers
10 have had the choice of several non-Steritub containers in an array of sizes for 19 years. As I
11 will discuss below, these options increased when Stericycle began offering two sizes of Rehrig
12 hinged lid containers last year, prior to Waste Management's application for new authority.
13 For this reason it is very misleading for Mr. Norton to fault Stericycle for not discontinuing use
14 of Steritubs. Mr. Norton knows but fails to mention that customers have always had other
15 container options if they disliked Steritubs. Again, a variety of container options will better
16 serve customer needs than a single container type.

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19 28. Mr. Norton testifies that it is "obvious" to him that Stericycle added a Rehrig
20 hinged lid container in 2011 "only" because of direct competition from Waste Management.
21 Again, Mr. Norton's belief does not match the facts. Stericycle companies outside of
22 Washington have offered a proprietary hinged lid container called the TB01 for some time.
23 These hinged lid containers were well known to me and others at Stericycle, including Mr.
24 Norton when he was a Stericycle employee. We have not made the TB01 containers available
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1 in Washington for two reasons. One, this container is not very popular where it is used and
2 until 2011 Washington customers had expressed interest in a hinged lid container to Stericycle.
3 In addition, the TB01 is grey in color, which would be inconsistent with Stericycle's color
4 scheme in Washington, in which grey designates pathological waste.

5
6 29. In mid-2011 we reevaluated offering a hinged lid container after some hospitals
7 expressed interest in trying a hinged lid container. James Ryan has informed me that he
8 received inquiries about trying hinged lid containers. Stericycle still could not use its TB01
9 container in Washington due to its potentially confusing color so I contacted a purchasing
10 employee from our national office to ask about other options. I was told that Rehrig makes a
11 nearly identical hinged lid container in a red color and had been pursuing sales to Stericycle
12 companies for some time. Ultimately, the decision was made to purchase hinged lid containers
13 from Rehrig and test them in the Washington market.

14
15 30. On June 6, 2011 Stericycle filed a tariff amendment adding a 31 gallon and 43
16 gallon Rehrig container to Stericycle's tariff. The revised tariff offers these containers in 16
17 Washington counties – Benton, Chelan, Douglas, Grant, Island, King, Kitsap, Kittitas, Lincoln,
18 Mason, Okanogan, Pierce, Skagit, Snohomish, Spokane, and Whatcom counties. To ensure
19 that the containers were tested by substantial waste generators, James Ryan took samples of
20 these new containers to many hospital customers in those counties. The first delivery of 67
21 Rehrig containers was made to St. Joseph Medical Center in Bellingham on June 22, 2011 and
22 those containers were collected on July 6th. I have attached an invoice to St. Joseph Medical
23 Center including these containers, with a handwritten note identifying the delivery date, as
24 Exhibit G.
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1 31. In my estimation the test of Rehrig containers in Washington indicates that
2 demand for these containers is no greater than demand for any other container type, including
3 the Steritub, and Stericycle overestimated customer demand for these hinged lid containers
4 based on the initial inquiries. Although some customers have adopted the Rehrig containers for
5 some purposes, other customers have returned them and opted to continue using the Steritub
6 and Rubbermaid removable lid containers. Second, we have a large volume of Rehrig
7 containers in our Kent warehouse that are not currently in use. Stericycle will continue to offer
8 the Rehrig as a container option along with the rest of its container choices. If customers
9 outside of the initial 16 counties express interest in hinged lid containers we will, of course,
10 amend the tariff and provide them, and can do so very quickly given the existing surplus of
11 containers. I note that no testifying generator has stated that they need or want hinged lid
12 containers. I note that no testifying generator has stated that they need or want hinged lid
13 containers.
14

15 32. Mr. Norton's testimony concerning the Rehrig containers is incorrect in almost
16 every way. It is not true that "[w]ithin a month of Waste Management starting its RMW
17 services in June 2011, Stericycle purchased and started marketing the exact Rehrig containers
18 Waste Management was using." In fact, Stericycle had filed a tariff amendment and purchased
19 containers by the beginning of June and had actually put them into circulation by June 22nd.
20 Mr. Norton does not state when Waste Management first provided customers with Rehrig
21 containers. There is no support for Mr. Norton's claim that Stericycle purchased and marketed
22 these containers only after Waste Management was already using them when Stericycle had
23 supplied Rehrig containers at nearly the same time as or even earlier than Waste Management.
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25 33. It is also not true that Stericycle offers its Rehrig containers "only in Waste
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1 Management's Certificate No. G-237 territory." In fact, Stericycle offers the Rehrig containers
2 in a much broader area and to many generators who are not in Waste Management's territory.
3 Stericycle's tariff amendment made Rehrig containers available in Grant, Lincoln, Mason,
4 Okanogan, Pierce, and Whatcom counties, all counties where Waste Management has a very
5 small service territory. Stericycle also offers Rehrig containers in all of Chelan, Island, King,
6 Kitsap, Snohomish, and Spokane counties, counties in which Waste Management only has
7 partial authority. Stericycle has made Rehrig containers available to many more generators
8 than necessary simply to match potential competition by Waste Management, especially in
9 populous counties where Waste Management has no authority in key markets, like Pierce and
10 Whatcom counties. Stericycle also did not send these containers only to customers that had
11 been approached by Waste Management but instead proactively offered samples of these
12 containers to all hospitals in the 16 counties added to the tariff. Again, Stericycle's goal was to
13 respond to specific customer inquiries and to test the demand for hinged lid containers with
14 many biomedical waste generators.
15

17 34. Finally, Mr. Norton's analysis of Stericycle's rates for the Rehrig containers,
18 which leads him to conclude that Stericycle matched Waste Management's rates, is wrong. Mr.
19 Norton testified that if only one Rehrig container were collected Stericycle would charge
20 \$44.95 versus \$50.22 for its "black" 31 gallon container. This is inaccurate. First, Stericycle's
21 tariff does not include a 31 gallon Steritub, only 21 and 48 gallon tubs. The \$50.22 rate is
22 actually for collecting one 31 gallon Rehrig container. There is no Stericycle container for
23 which the rate is \$44.95 for a single container. Exhibit C.
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25 35. In fact, in Mr. Norton's scenario if only one, full Rehrig container was collected,
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1 Waste Management's tariff indicates that it would charge \$1.45 per gallon for a 31 or 43 gallon
2 Rehrig container. I have attached Waste Management's biomedical waste tariff as Exhibit H.
3 In the same scenario, Stericycle's tariff would impose a charge of \$50.22 for a 31 gallon Rehrig
4 container and \$67.94 for a 43 gallon Rehrig container. Exhibit C. On a per gallon basis,
5 therefore, Stericycle's tariff would charge \$1.62 per gallon for the 31 gallon container and
6 \$1.58 per gallon for the 43 gallon container. Mr. Norton is incorrect that these rates match
7 Waste Management's equivalent rates.
8

9 36. Finally, in my experience from speaking with our drivers and sales staff,
10 customers have indicated that the Rehrig containers do not work in many situations. For
11 example, the containers do not work well in some tight spaces like under sinks because the
12 hinged lids need room to swing from the open to closed position. These containers also
13 require more handling of the liner bag than a removable lid container. Bags are typically
14 inserted into containers and folded over the rim of the containers. In a removable lid container
15 the lid is placed on top of the bag where it folds over the container lip. On a hinged lid
16 container the bag folds over the open lid flaps. To close the container between uses the bag
17 must be gathered into the container before the lid flaps can be swung shut, and then must be re-
18 opened to add new waste. Opening and gathering the bag each time the container is used is an
19 additional contact with the bagged waste and creates a potential hazard, making the Rehrig
20 container less suitable for uses in which it must be opened and closed frequently. Some
21 customers simply prefer removable lid containers to hinged lid containers.
22

23
24 37. Offering a choice of several types of containers is the best way to meet customer
25 needs. Even Mr. Norton agrees that customers prefer choices of containers. Only Stericycle's
26

1 services offer a choice of different types of containers and does so in a large variety of sizes.

2 38. Mr. Norton next offers testimony concerning Waste Management's ecoFinity
3 sharps collection program. I note that Waste Management's testifying generators have not
4 offered any testimony stating a need for the ecoFinity service or any testimony that Stericycle's
5 sharps collection program is unsatisfactory.
6

7 39. Mr. Norton testified that ecoFinity is "a more sustainable way to handle RMW."
8 At his deposition Mr. Norton explained and corrected that statement in three important
9 respects. First, he acknowledged that ecoFinity was only a sharps program, not a program for
10 collecting all "RMW." Exhibit A, 141:2-19. Second, Mr. Norton explained that in his
11 testimony "sustainable" was his way of saying that some of the waste material was reclaimed
12 as recyclable material instead of being disposed of. Exhibit A, 142:1-8. Third, Mr. Norton
13 explained that by stating that ecoFinity was "more" sustainable, he was comparing ecoFinity to
14 a traditional sharps program in which the sharps container and waste are disposed of in a
15 landfill. Exhibit A, 142:9-15. His testimony is not a comparison between ecoFinity and
16 Stericycle's sharps program. Thus, according to Mr. Norton ecoFinity is "more sustainable"
17 than a traditional sharps program because some portion of the container and waste are
18 recovered as recyclable materials rather than being disposed of in a landfill.
19

20 40. Mr. Norton, however, agreed that Stericycle's sharps program is also a
21 sustainable service. Exhibit A, 160:3-8. As I mentioned in my initial prefiled testimony,
22 Stericycle's sharps program uses reusable containers, and reusing those containers diverts
23 approximately 50% of the sharps waste stream from disposal in a landfill. In a supplemental
24 discovery response, Waste Management has indicated that on average only 22% of the monthly
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1 ecoFinity waste stream is reclaimed as recyclable materials, and as little as 8% in any given
2 month. Exhibit B. This is less waste diversion that is achieved by Stericycle. Using Mr.
3 Norton's terminology, Stericycle's sharps program is more "sustainable" than Waste
4 Management's ecoFinity program.
5

6 41. In addition, Stericycle's sharps program accomplishes this waste diversion
7 without the extra transportation and processing that Waste Management performs. To obtain
8 and recycle its average 22% reclaimed materials Waste Management transports the sharps
9 waste to Southern California for treatment, the waste is ground and washed, transported again
10 to a reclamation facility, processed using "float/sink technology," the reclaimed plastics are
11 pelletized, the plastic pellets are transported again to Becton Dickinson, and finally some
12 amount of those plastics are re-manufactured into new disposable sharps containers. These
13 seven additional steps involve a tremendous input of energy to reclaim and recycle the plastics
14 that Stericycle's sharps program does not require.
15

16 42. Mr. Norton presents ecoFinity as a service that is different from Stericycle. I
17 believe that this testimony is misleading at best. In fact, Stericycle and Waste Management
18 both offer a sharps collection service in which a portion of the waste stream is diverted from
19 the landfill and reused or recycled. Stericycle's service diverts and reuses a greater portion of
20 its waste stream and does so with substantially fewer energy inputs.
21

22 43. I have reviewed reports of the waste collected, processed, and diverted in
23 Stericycle's sharps collection program from 2005 through 2012 (September). Between 2005
24 and 2011 the amount of waste that Stericycle's sharps program has diverted from landfills
25 every year has grown from 446,165 pounds to 1,623,071 pounds per year. From January, 2005
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1 until September of this year Stericycle's sharps program has been responsible for keeping
2 9,363,061 pounds (4,682 tons) of plastic waste out of Washington's landfills and has eliminated
3 the need to manufacture a similar volume of new plastics sharps containers.

4 44. Mr. Norton concludes his testimony by identifying several other aspects of
5 Waste Management's services that he believes are different from Stericycle's services. The
6 first of these differences is Stericycle's minimum \$10 fee in months where no waste is
7 collected. I have addressed this fee above. Mr. Norton does not contest this fee or claim that it
8 is not legitimate and reasonable. Mr. Norton merely states his opinion that "many smaller
9 doctor's and dentist's offices . . . dislike Stericycle's minimum fee." Mr. Norton does not
10 identify any such doctors or dentists. Only a single generator witness has raised a concern
11 about the minimum monthly fee and, like Mr. Norton, she does not contest that the fee is a
12 legitimate charge to recoup the expenses of serving small customers with infrequent service.
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15 45. Mr. Norton testifies that "Waste Management's treatment facility in Seattle is
16 closer to most of the facilities generating RMW in Washington than is Stericycle's treatment
17 facility in Lewis County . . ." which, according to Mr. Norton, reduces risk of liability and
18 environmental impact. Mr. Norton did not explain or present any analysis to support this
19 assertion. At his deposition Mr. Norton admitted that he had not performed or read any study of
20 the effect of increased highway transportation on risk of liability. Exhibit A, 165:4-11.
21

22 46. Emily Newcomer of the University of Washington has also stated that she
23 believes that because Waste Management's Seattle treatment facility is closer to the University
24 of Washington's Tacoma campus than Stericycle's Morton, Washington treatment facility that
25 the ability to contract with Waste Management to collect biomedical waste from the Tacoma
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1 campus will result in reduced emissions from transportation and will reduce the risk and
2 liability associated with transporting untreated biomedical waste. Ms. Newcomer has also not
3 presented any analysis to support this assertion.

4 47. First, I note that Mr. Norton and Ms. Newcomer's beliefs, even if true, do not
5 apply to generators statewide. Although Seattle is approximately 60 miles closer to Tacoma
6 than Morton by major highway routes, the same is not true for large portions of the state. For
7 example, Olympia, Vancouver, Yakima, the Tri-cities area, Walla Walla, and their surrounding
8 regions, indeed most of Southern Washington are closer to Morton than Seattle. Depending on
9 the placement of transfer stations and driving routes, the same could be true for generators on
10 the Olympic peninsula, Spokane, and other portions of Eastern Washington. Waste
11 Management has not identified where its transfer hubs or routes will be located for state-wide
12 service so it is impossible to evaluate any claim that service to generators state-wide would
13 include fewer transportation miles than Stericycle's service.

14 48. I also disagree with Mr. Norton's and Ms. Newcomer's assertion that decreased
15 transport time results in decreased "risk of liability," or that transportation of biomedical waste
16 has any appreciable connection to a generator's "risk of liability" whatsoever. Mr. Norton and
17 Ms. Newcomer do not explain the "risk of liability" they believe is reduced. I assume that they
18 are referring to the risk that a generator's biomedical waste would be released from a truck
19 during transport, presumably due to an accident, and transmit an infectious agent to a person
20 who comes in contact with the waste, and the generator's potential liability for such a
21 transmission.

22 49. I have consulted with Stericycle staff and based on those consultations and my
23
24
25
26

1 own experience I am not aware of any instance in Washington where biomedical waste has
2 been released from a truck or trailer during transportation since I began working for Stericycle.
3 Between 2006 and September of this year Stericycle's drivers logged 6,516,468 miles. As a
4 result, the per-mile risk of a biomedical waste release during transportation, let alone
5 transmission of an infectious agent, is infinitesimal, bordering on non-existent. The risk of
6 liability to the University of Washington from hauling biomedical waste an additional 60 miles
7 from its Tacoma Campus to Morton, Washington is essentially zero.

9 50. Even the risk of accident from transportation, the most likely theoretical cause
10 of a release of biomedical waste from a truck or trailer, is miniscule. I have attached as Exhibit
11 I a report of the miles driven by Stericycle and all on-roadway collisions from 2006 to the
12 present. Again, since 2006 Stericycle has driven 6,516,468 miles. In that time period
13 Stericycle trucks have been involved in 14 on-roadway accidents. Thus, Stericycle's rate of on-
14 roadway accidents per mile is .00022%, 2.2 ten-thousandths of one percent. This equates to
15 approximately one on-roadway accident every 465,462 miles driven. Based on these rates, the
16 extra 60 miles that waste from the University of Washington's Tacoma campus is driven to
17 reach Morton, Washington would likely involve an accident only once every 7,758 trips. Even
18 if the Tacoma campus' waste is collected monthly, an accident based on the additional miles to
19 Morton would be expected only once every 647 years. Of course, an actual release of
20 biomedical waste during transportation, let alone transmission of an infectious agent, would at
21 best be far more rare.

24 51. The risk that Ms. Newcomer and Mr. Norton are claiming is even more remote
25 given that the additional transportation they are referring to is primarily hauling over relatively
26

1 over relatively rural highways, not the collection of waste from the generator in relatively
 2 populated areas, which any carrier would have to perform regardless of the location of its
 3 treatment facility. In reviewing the description of accidents it is clear that many if not most of
 4 the roadway accidents occurred on streets in cities and towns, not on more rural highways.
 5 Thus, the accident rate discussed above is likely even lower for the additional transportation
 6 miles that Ms. Newcomer and Mr. Norton are referring to. Of course, the risk of actual release
 7 during such an accident is far, far less given Stericycle's history of no biomedical waste
 8 releases from its trucks and trailers during transportation in Washington.
 9

10 52. Moreover, if biomedical waste were to be released during such transportation
 11 the release would occur on or near a highway, not in a populated or inhabited area. The lack of
 12 people outside of vehicles in such areas coupled with Stericycle's ability to clean up any spill
 13 using an in-truck spill kit or a larger response further indicates that the risk of liability claimed
 14 by Mr. Norton and Ms. Newcomer simply does not exist by any practical measurement.
 15

16 I declare under penalty of perjury under the laws of the State of Washington and the
 17 United States that the foregoing is true and correct to the best of my knowledge and belief.

18 EXECUTED this 16th day of November, 2012 at Kent, Washington

19
 20 By 
 Mike Philpott

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CERTIFICATE OF SERVICE

I, Vickie L. Owen, certify under penalty of perjury under the laws of the State of Washington that, on November 16, 2012, I caused to be served on the person(s) listed below in the manner shown a copy of PREFILED REBUTTAL TESTIMONY OF MIKE PHILPOTT:

Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250
(360) 664-1160
records@utc.wa.gov

- Via Legal Messenger
- Via Facsimile
- Via FedEx
- Via Email

Administrative Law Judge
Gregory Kopta
gkopta@utc.wa.gov

- Via Email

Jessica Goldman
Polly L. McNeill
Summit Law Group
315 - 5th Avenue South
Seattle, WA 98104
jessicag@summitlaw.com
pollym@summitlaw.com
kathym@summitlaw.com
deannas@summitlaw.com

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,
Postage Prepaid
- Via Email

James K. Sells
Attorney at Law
PMB 22, 3110 Judson Street
Gig Harbor, WA 98335
jamessells@comcast.net
cheryls@rsulaw.com
*Attorney for Protestant WRRRA, Rubatino,
Consolidated, Murrey's and Pullman*

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,
Postage Prepaid
- Via Email

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Frona Woods
Office of the Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
PO Box 40128
Olympia, WA 98504-0128
(360) 664-1225
(360) 586-5522 Fax
fwoods@utc.wa.gov
BDeMarco@utc.wa.gov

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,
Postage Prepaid
- Via Email

Dated at Seattle, Washington this 16th day of November, 2012.



Vickie L. Owen
vowen@gsblaw.com

EXHIBIT A Stericycle Exhibit No. ____ (MP-16)

Transcript of the Testimony of

Jeffrey Norton

October 15, 2012

**In the Matter of the Application of Waste Management of
Washington
No. TG-120033**



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scheduling@byersanderson.com
www.byersanderson.com

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Seattle: **206 340-1316** Toll Free: **800 649-2034**
Old Town District: 2208 North 30th Street, Suite 202 Tacoma, WA 98403-3360
Tacoma: **253 627-6401** Fax: **253 383-4884**

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Seattle/Tacoma, Washington**

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application)
of)
)
WASTE MANAGEMENT OF WASHINGTON,) Docket No. TG-120033
INC., D/B/A WM HEALTHCARE)
SOLUTIONS OF WASHINGTON) Order 05
)
For an Extension of Certificate)
G-237 for a Certificate of Public)
Convenience and Necessity to)
Operate Motor Vehicles in)
Furnishing Solid Waste Collection)
Service)

DEPOSITION OF JEFFREY NORTON

October 15, 2012

Seattle, Washington

Byers & Anderson, Inc.

Court Reporters/Video/Videoconferencing

One Union Square	2208 North 30th Street, Suite 202
600 University St.	Tacoma, WA 98403
Suite 2300	(253) 627-6401
Seattle, WA 98101	(253) 383-4884 Fax
(206) 340-1316	scheduling@byersanderson.com
(800) 649-2034	www.byersanderson.com

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1 APPEARANCES
2
3 For Stericycle:
4
5 Jared Van Kirk
6 Garvey Schubert Barer
7 1191 Second Avenue
8 Suite 1800
9 Seattle, WA 98101
10 206.464.3939
11 206.464.0125 Fax
12 jvankirk@gsblaw.com
13
14 For Waste Management:
15
16 Jessica L. Goldman
17 Summit Law Group
18 315 Fifth Avenue South
19 Suite 1000
20 Seattle, WA 98104
21 206.676.7062
22 206.676.7063 Fax
23 jessicag@summitlaw.com
24
25 For Washington Refuse & Recycling Association:
26
27 James K. Sells
28 Washington Refuse & Recycling
29 Association
30 3110 Judson
31 Gig Harbor, WA 98335
32 360.981.0168
33 360.307.8865 Fax
34 jamesells@comcast.net
35
36
37
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24
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APPEARANCES (Continuing)

For Utilities & Transportation Commission Staff
(appearing by phone):

Frona Woods
Assistant Attorney General
Washington Attorney General's Office
Utilities & Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
360.664.1225
360.586.5522 Fax
fwoods@utc.wa.gov

Also present: Jeff Daub
Ron Adams
Mike Philpott

1 Stericycle could offer a range of containers that the
2 smaller competitors out there didn't have or couldn't
3 offer?

4 **A** Correct.

5 When I worked at Stericycle, there -- or when I
6 worked at BFI -- excuse me -- one of our selling points
7 that I didn't mention was our containment versus the
8 Stericycle Steritubs, which is a container they designed.

9 And, yeah, that was a selling point. So being able
10 to offer different containers to customers that had
11 issues with those containers was important.

12 **Q** It was your experience that the large generators at least
13 valued having that choice between different kinds of
14 containers?

15 **A** Yes.

16 **Q** Now, you mentioned Steri-Safe. What is that, briefly?

17 **A** Steri-Safe, when it started, was sort of an OSHA program
18 for mostly small quantity generators.

19 At the time, when I did work for Stericycle, there
20 was a lot of cross-selling. You worked selling small
21 quantity and large quantity, even though that was, you
22 know, generally my job description.

23 So I helped launch the Steri-Safe program in
24 Washington. And at the time, we also offered hazardous
25 waste pickup through -- picking up all the dental waste,

1 Q Yeah.

2 A So I did at that time speak to them.

3 Q Do you believe you should qualify this testimony at all
4 to say something more accurate about the number of
5 customers who had complained, or do you think "most" is
6 still correct?

7 A I think "most" --

8 MS. GOLDMAN: Objection.

9 Argumentative.

10 A I think "most" is correct.

11 Q (By Mr. Van Kirk) Okay. Does Waste Management offer any
12 medical waste containers other than the Rehrig
13 containers? Leaving Sharps aside, maybe.

14 A Yes.

15 Q What other non-Sharps medical waste containers are
16 available?

17 A Cardboard box is used.

18 Q Fair enough. I didn't think about that.

19 Any other plastic ones?

20 A Not -- not in our market area, no.

21 Q Now, earlier you testified that you believed customers
22 appreciated having a choice of containers when you were
23 at Stericycle.

24 Do you believe that's different, coming from Waste
25 Management? Do customers not need a choice of containers

1 from Waste Management?

2 **A I think a choice is good in all aspects of the business.**

3 Q Do you know why Waste Management doesn't offer a choice
4 of different plastic medical waste containers?

5 **A We have not had any complaints. In fact, all positive**
6 **comments about our containers. So there's been no need**
7 **to look into that at this point.**

8 Q In your knowledge of customers, would service offerings
9 where customers could choose between a Rehrig container
10 and several other choices be better than services where
11 only the Rehrig containers were available?

12 MS. GOLDMAN: I'm sorry, could I have
13 that read back, please.

14 (Question on Page 102,
15 Lines 8 through 11,
16 read by the reporter.)

17
18 MS. GOLDMAN: Objection. Asked and
19 answered.

20 **A Yes, choices are good.**

21 Q (By Mr. Van Kirk) And that choice in particular?

22 **A Correct.**

23 Q Are you aware of any Stericycle customers that have tried
24 both the Rehrig and the Steritubs and decided not to go
25 with the Rehrig containers?

1 **A Correct.**

2 **Q Your testimony says that the ecoFinity program offers a**
3 **more sustainable way to handle RMW.**

4 The testimony I just read to you, that's actually --
5 you're just addressing sharps there; right?

6 **A I'm addressing anything that could be inside of a sharps**
7 **container. And that generally could be other medical**
8 **waste, as well.**

9 **Q I just want to clarify, because this testimony I just**
10 **read could be implied to -- could be read to read that**
11 **the pilot program, ecoFinity, is a more sustainable way**
12 **to handle all RMW.**

13 That's not true; right?

14 **A Correct.**

15 **Q We're just talking about whatever makes it into the**
16 **ecoFinity sharps containers?**

17 **A Correct.**

18 **Q Which is hopefully mostly sharps?**

19 **A Correct.**

20 **Q Okay. What do you mean when you say the service is more**
21 **sustainable or offers a more sustainable way?**

22 **A What I mean is that as we are able to increase the**
23 **recovery, most of the items that are in a sharps**
24 **container, including the sharps container, is recyclable**
25 **content.**

1 Q Okay. So to you, when you say "sustainable," you mean
2 it offers more -- it offers recycling, whereas the
3 disposable option obviously does not?

4 A **That's correct.**

5 Q So in your testimony, the parameter for sustainability is
6 the production of recyclable process at the end of the
7 processing; right?

8 A **Correct.**

9 Q So when you say "more sustainable," what are you
10 comparing it to? More than what?

11 A **The regulated medical waste in general going to the
12 landfill.**

13 Q So your claim here is that ecoFinity is more sustainable
14 than regular single-use landfill sharps; right?

15 A **That's correct.**

16 Q Okay. St. Joe's is the only one using this. Have you
17 talked about ecoFinity to other customers besides Peace
18 Health?

19 A **In general, yes, but not -- not serious presentations,
20 that I can think of.**

21 Q All right.

22 A **It was pretty much Peace Health and when they agreed for
23 St. Joe's, and that was the pilot program for hospitals.**

24 Q Have any presentations to anybody else gotten down to the
25 level of talking about the recycling benefits, or is it

1 Q When you talk to customers, I guess Peace Health or
2 Fred Hutchinson, about sort of the ecological -- or
3 environmental benefits of ecoFinity, did you discuss the
4 issue of transportation and fuel use in transportation?

5 A No.

6 Q Was there any question about that being an element of the
7 services?

8 A No.

9 Q Did you inform them that the processing of the waste
10 occurs in California?

11 A Yes.

12 Q The customers you've talked to just haven't been
13 concerned about that aspect of the -- that environmental
14 aspect of the services?

15 A I'd be speculating.

16 Q They haven't expressed any concern about that?

17 A No, not directly.

18 Q You mentioned way back when we started this -- and then
19 I'll move on to a new topic -- that, in your testimony,
20 this was a more sustainable service because it basically
21 diverts a lot of waste from -- that would otherwise end
22 up in the landfill; right?

23 A Correct.

24 MS. GOLDMAN: Objection. Asked and
25 answered.

1 MR. VAN KIRK: I was just getting on
2 the same page again.

3 Q (By Mr. Van Kirk) So it's true that Stericycle also
4 offers a sustainable service under that definition;
5 right?

6 A They offer, yeah, a reasonable sharps container program.

7 Q That you would also consider sustainable?

8 A Yes.

9 Q Okay. New topic. That was a big one. The next one
10 should go a little faster.

11 You bring up in your testimony, on Page 5, the issue
12 of some benefits of having a processing facility in
13 Seattle, which is closer to some generators. So that's
14 the topic I'm talking about.

15 You say it's closer to most facilities generating
16 medical waste in Washington. Have you studied that?

17 A I have.

18 Q You've studied the proximity of the Seattle facility to
19 all the generators --

20 A I have.

21 Q -- in Washington?

22 A Yes.

23 Sorry.

24 Q Every single one of them?

25 A The ones that I would be calling on. The 108 hospitals.

1 Q Is there something about the waste being transported over
2 the highways or the roads that increases the risk as
3 opposed to untreated waste sitting in your facility or
4 sitting on the loading dock or being transferred from one
5 truck to another?

6 A Can you restate the question, please?

7 Q You have said less travel time for untreated waste from
8 the generator to the treatment facility reduces the risk
9 of liability; which I take to mean the less time you're
10 driving the waste over the roads, the less risk you have.

11 My question to you is: First of all, to explain
12 that to me; and second of all, have you communicated that
13 to customers?

14 MS. GOLDMAN: Objection. Compound.

15 MR. VAN KIRK: True.

16 Q (By Mr. Van Kirk) Take the first question first.

17 MS. GOLDMAN: What was the first
18 question again?

19 Q (By Mr. Van Kirk) Are you saying that there is a risk
20 inherent in transporting waste over the roads, other than
21 just the fact that the waste isn't treated yet?

22 A Yes.

23 Q What is that?

24 A Well, there's driving. You know, there's risk in driving
25 your car, so there's risk in driving a truck with medical

1 waste in it.

2 Q Okay.

3 A So if you don't have to have it on the road as long or
4 you don't have to drive as far, your risk is probably
5 mitigated because you don't have as many opportunities to
6 have an accident or a problem.

7 Q And how do you know that? Is that just your commonsense
8 guess, or is that --

9 A It's my commonsense guess and -- yeah, yes, and just
10 being in the industry, the transportation industry, for a
11 long time.

12 Q Now, have you told any customers that such a risk exists
13 and it's something they should be concerned about?

14 MS. GOLDMAN: "Such a risk" being the
15 risk of being on the highway?

16 MR. VAN KIRK: Yeah.

17 Q (By Mr. Van Kirk) The increased risk of liability from
18 travel time.

19 A I have told customers that there's an increased -- there
20 could be an increased risk of untreated medical waste
21 over the roadways, yes.

22 Q Did you tell that to any of the testifying generators?

23 A I can't remember exactly, but possibly.

24 Q How about the woman from U-Dub?

25 A No. I didn't talk to her until after she had already

1 **filed testimony.**

2 Q How about the -- oh, you didn't talk to the man from Lake
3 Chelan. You told me that.

4 Have you done any study of the effect of increased
5 highway transportation on this risk?

6 A **No.**

7 Q Okay. Have you read any such study, other than doing it
8 yourself?

9 A **No. My research has been from just being in this**
10 **industry with other management folks trying to reduce**
11 **liability for customers.**

12 Q Okay. Let me try and unpack this a little more.

13 Tell me if you disagree, but I think you'll agree,
14 that a risk from untreated waste is that it might cause
15 somebody who comes in contact with that waste to become
16 infected with something.

17 Does that basically state what the risk of --

18 A **Yes.**

19 Q -- medical waste is? Okay.

20 So risk raises whenever you have a greater chance of
21 people coming in contact with that waste; is that right?

22 A **Correct.**

23 Q Wouldn't it be the case that increasing the amount of
24 waste that you transport through a populated area would
25 increase risk a lot more than driving waste over highways

EXHIBIT B Stericycle Exhibit No. ____ (MP-27)

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of

WASTE MANAGEMENT OF
WASHINGTON, INC.
d/b/a WM Healthcare Solutions
of Washington
720 4th Ave. Ste 400
Kirkland, WA 98033-8136

Docket No. TG-120033

**PROTESTANT STERICYCLE OF
WASHINGTON, INC.'S SECOND DATA
REQUESTS TO APPLICANT WASTE
MANAGEMENT OF WASHINGTON,
INC. AND SUPPLEMENTAL
RESPONSES THERETO**

Subject to the Commission's October 3, 2012 order and, otherwise subject to its previously stated objections, Waste Management of Washington, Inc. ("Waste Management") provides the following supplemental responses to Stericycle of Washington, Inc.'s ("Stericycle") Second Data Requests.

DATA REQUESTS

DATA REQUEST NO. 3:

Please Identify when and how frequently you have collected material in Washington for Your ecoFinity Sharps Recycling Services, how long the material collected was stored at Your Seattle processing facility, and when and how frequently such material was transported to California for processing.

Supplemental Response: Waste Management collects waste at St. Joseph's Medical Center for ecoFinity processing weekly.

DATA REQUEST NO. 4:

Please Describe the "pilot" program for Your ecoFinity Sharps Recycling Services that is being conducted or has been conducted at St. Joseph Medical Center. Please produce all records describing the services involved in that "pilot" program.

Supplemental Response: See Waste Management's responses to Stericycle's first Data Request Nos. 18(A), 18(E), and 18(G). See also WM000148-154, WM000174-75, WM000189-92, and www.bd.com/ecoFinity.

PROTESTANT STERICYCLE OF WASHINGTON,
INC.'S SECOND DATA REQUESTS TO APPLICANT
WASTE MANAGEMENT OF WASHINGTON, INC.
AND OBJECTIONS AND RESPONSES THERETO-1

DATA REQUEST NO. 7:

Please provide the following data concerning the material You collected from St. Joseph Medical Center through Your ecoFinity Sharps Recycling Services in 2011 and 2012 (to date):

- a) the total weight and/or volume of such material
- b) the total weight and/or volume of such material that was converted into recyclable pelletized plastics
- c) the total weight and/or volume of such material that was converted into recyclable metals
- d) the total weight and/or volume of such material that was not converted into recyclable materials and/or was discarded

Supplemental Response: Becton Dickinson determines the recycling yield by comparing the quantity of waste material that it receives from Waste Management (and two locations outside of the State of Washington) with the quantity of recycled pellets that emerge from the waste's treatment in the ecoFinity system.

Week	Sharps from Childrens Hosp	Sharps from Davita	Sharps from Seattle	Total lbs received	Pounds Processed	% Recycled
12/18/2011	1268	3853	4663	9784	3382	35%
1/15/2012	1073	4282	13613	18968	3391	18%
2/5/2012	1461	4340	4171	9972	3186	32%
3/4/2012	1235	4262	8499	13996	1400	10%
5/6/2012	1583	3473	11309	16365	4501	28%
6/3/2012	1445	4537	12642	18624	3219	17%
7/1/2012	978	4129	12771	17878	3776	21%
7/29/2012	1235	4576	11481	17292	5391	31%
9/9/2012	1246	3670	11696	16612	1341	8%

SUPPLEMENTAL RESPONSES DATED this 19th day of October, 2012.

SUMMIT LAW GROUP PLLC

By 

Polly L. McNeill, WSBA #17437
Jessica L. Goldman, WSBA #21856
pollym@summitlaw.com
jessicag@summitlaw.com

*Attorneys for Waste Management of
Washington, Inc.*


PROTESTANT STERICYCLE OF WASHINGTON,
INC.'S SECOND DATA REQUESTS TO APPLICANT
WASTE MANAGEMENT OF WASHINGTON, INC.
AND OBJECTIONS AND RESPONSES THERETO-2

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method indicated below, pursuant to WAC 480-07-150.

Fronda Woods Attorney General's Office of Washington PO Box 40128 Olympia, WA 98504 (360) 664-1225 fwoods@utc.wa.gov bdemarco@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Stephen B. Johnson Jared Van Kirk Garvey Schubert Barer 1191 Second Avenue, Suite 1800 Seattle, WA 98101 (206) 464-3939 sjohnson@gsblaw.com jvankirk@gsblaw.com vowen@gsblaw.com dbarrientes@gsblaw.com <i>Attorneys for Stericycle of Washington, Inc.</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
James K. Sells 3110 Judson Street Gig Harbor, WA 98335 (360) 981-0168 jamesells@comcast.net cheryls@rsulaw.com <i>Attorney for Protestant WRRRA, Rubatino, Consolidated, Murrey's, and Pullman</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email

DATED at Seattle, Washington, this 19th day of October, 2012.



 Deanna L. Schow

EXHIBIT C Stericycle Exhibit No. ____ (MP-18)

W.U.T.C. NO. 1

SECOND REVISED TITLE PAGE
CANCELS
FIRST REVISED TITLE PAGE

TARIFF NO. 1
OF
STERICYCLE OF WASHINGTON, INC.
d/b/a
STERICYCLE
CERTIFICATE NO. G-244

(C) Naming Rates for the Collection, Transportation and Disposal of Solid Waste
Consisting of Biohazardous or Biomedical Wastes in the State of Washington

ISSUED BY:

Michael S. Philpott, District Manager
STERICYCLE OF WASHINGTON, INC.
20320 80th Avneue S.
Kent, WA 98032
Telephone: (425) 291-9322
Fax: (425) 291-9329

Issue Date: October 8, 2001

Effective Date: December 1, 2001

(This box for official use only)

Effective: 12-1-01 Docket No. TG-011320 By: MP

Tariff No. 1	11 th Revised Page No. 1
Company Name: Stericycle of Washington, Inc. (G-244)	Cancels 10 th Revised Page No. 1

CHECK SHEET

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